

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEMETRIUS ALDERSON,

Plaintiff,

Case No. 1:07-CV-1003

v.

Honorable Richard Alan Enslen

DAVE BURNETT,

Defendant.

JUDGMENT

This is a civil rights action brought by a state prisoner pursuant to 42 U.S.C. § 1983. On June 13, 2008, United States Magistrate Judge Ellen S. Carmody issued a Report and Recommendation (Report) to grant Defendant's motion for summary judgment because Plaintiff had failed to demonstrate that Defendant was personally involved in the actions of which Plaintiff complains. The matter presently is before the Court on Plaintiff's objections to the Report.

This Court reviews *de novo* those portions of a Report to which objections are made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court may accept, reject or modify any or all of the Magistrate Judge's findings or recommendations. *Id.*

Plaintiff makes a variety of objections, only one of which requires discussion. Plaintiff argues that the Magistrate Judge erred in granting summary judgment to Defendant before allowing Plaintiff to engage in discovery. Plaintiff principally argues what he previously argued in his response to Defendant's motion for summary judgment: that he should have been allowed to discover whether Defendant, although not officially responsible for the placement of publications on the Restricted Publication List, gave input to the Deputy Director of the Correctional Facilities

Administration (“CFA”) who made that decision. The Magistrate Judge rejected the argument, reasoning that, because Plaintiff had conceded that Defendant lacked the authority to place books on the Restricted Publication List, further discovery could not demonstrate that Defendant was responsible for the constitutional deprivation alleged by Plaintiff. The Court agrees with the Magistrate Judge’s analysis.

In the second part of his objection to the lack of discovery, Plaintiff argues for the first time that he should have been permitted discovery that would have revealed the name of the Deputy Director of the CFA. Plaintiff claims that such discovery would have allowed him to amend his complaint to add a new defendant.

Plaintiff’s suggestion that he would like to amend his complaint comes too late. As the Sixth Circuit has explained,

[w]hile the Magistrate Judge Act, 28 U.S.C. § 631 *et seq.*, permits *de novo* review by the district court if timely objections are filed, absent compelling reasons, it does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate.

Murr v. United States, 200 F.3d 895, 902 n.1 (6th Cir. 2000) (citing, *inter alia*, *United States v. Waters*, 158 F.3d 933, 936 (6th Cir. 1998); see also *Williams v. Allegan County Sheriff Dep’t*, No. 1:07-cv-1052, 2008 WL 1701649, at *2 (W.D. Mich. Apr. 9, 2008)). Defendant’s motion to dismiss was filed on January 11, 2008, together with a motion to stay discovery. In his combined response to the motion for summary judgment and the motion to stay discovery, Plaintiff did not indicate an intent either to discover the name of the Deputy Director of the CFA or to amend his complaint. After the Magistrate Judge granted the stay on February 22, 2008, Plaintiff made no attempt to appeal the decision, to seek an exception to the stay or to amend the complaint. Only after the

Report was issued on July 14, 2008 did Plaintiff make the instant passing reference to the possibility of amendment. Plaintiff's belated objection therefore will be denied.

The Court has also reviewed *de novo* Plaintiff's remaining objections and finds no error in the reasoning of the Magistrate Judge. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Objections (Dkt. No. 24) are **DENIED**, the Report and Recommendation (Dkt. No. 23) is **ADOPTED**, Defendant Dave Burnett's Motion for Summary Judgment (Dkt. No. 15) is **GRANTED**, and the action is **DISMISSED WITH PREJUDICE**.

DATED in Kalamazoo, MI:
September 8, 2008

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE